

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

BARBARA GRIFFITH, an individual,

Plaintiff,

CASE NO.: 3:19-cv-533-RJC-DSC

vs.

BANC OF AMERICA MERCHANT
SERVICES, LLC

Defendant

/

AMENDED COMPLAINT

Plaintiff Barbara Griffith (“Ms. Griffith” or “Plaintiff”), by and through its undersigned counsel, hereby files this Amended Complaint against Defendant Banc of America Merchant Services, LLC, (“Defendant”) seeking monetary damages and other relief, and states as follows:

Jurisdiction and Venue

1. This is an action for monetary damages, in which the matter in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interest, costs, and attorneys’ fees. This Court has original jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1332.
2. Venue is appropriate in the United States District Court for the Western District of North Carolina, pursuant to 28 U.S.C. § 1391, as Defendant has its primary place of business in Charlotte, North Carolina and as it is the appropriate venue pursuant to the jurisdictional terms and conditions of Defendant’s 2018 Sales Incentive Compensation Plan under which Plaintiff brings a portion of her claims.

Parties

3. At all times relevant, Ms. Griffith has been and continues to be a resident of Tampa, Florida.

4. Upon information and belief, Defendant is a Delaware limited liability company which maintains a principal place of business at 150 N. College Street, Charlotte, North Carolina 28255.

Factual Background

5. In or around December 2016, BAMS hired Ms. Griffith as a Solutions Consultant based out of Tampa, Florida. Throughout 2016 and 2017, Ms. Griffith worked diligently to perform her duties as a Solutions Consultant for BAMS.

6. Ms. Griffith reported to BAMS corporate offices in Charlotte, North Carolina, and had no local office in Florida, wherein she reported to work. Ms. Griffith was a remote employee of BAMS corporate offices located in Charlotte, North Carolina.

7. A little over a year later, in February 2018, Ms. Griffith was promoted to Vice President, Business Consultant, Large Corporate, Retail & Consumer.

8. Effective January 1, 2018, BAMS instituted its 2018 Sales Incentive Plan: Large Corporate Business Consultant (“Sales Plan”). See Ex. A, BAMS 2018 Sales Incentive Plan: Large Corporate Business Consultant.

9. The Sales Plan is in writing and was instituted with the intent for BAMS and all participants under the Sales Plan, including Ms. Griffith, to be bound by the Sales Plan’s terms and conditions.

10. Ms. Griffith completed a 2018 Sales Incentive Compensation Opportunity Acknowledgement form with the intention to be bound by BAMS’s Sales Plan.

11. In the Sales Plan, BAMS agreed to the following, *inter alia*:

- a. To pay Ms. Griffith an annual “Over Achievement Bonus” (“OA Bonus”) that would be “[p]aid on actual revenue in excess of goal” if Plaintiff met or exceeded 110% of her “Total In Year Revenue Target, and met or exceeded her year over year recurring revenue growth.
- b. The terms of the OA Bonus provided that Ms. Griffith would receive the following payout based on the percentage of her goal achieved:
 1. If Ms. Griffith achieved 0 to 109.99% of her Total In Year Revenue Target, she would be entitled to a payout at a rate of 0% the actual revenue in excess of her Total In Year Revenue Target;
 2. If Ms. Griffith achieved 110% to 124.99% of her Total In Year Revenue Target, she would be entitled to a payout at a rate of 10% the actual revenue in excess of her Total In Year Revenue Target;
 3. If Ms. Griffith achieved 125% to 149.99% of her Total In Year Revenue Target, she would be entitled to a payout at a rate of 20% the actual revenue in excess of her Total In Year Revenue Target; and
 4. If Ms. Griffith achieved 150% or greater of her Total In Year Revenue Target, she would be entitled to a payout at a rate of 25% the actual revenue in excess of her Total In Year Revenue Target.

See Exhibit A, pg. 21.

12. Throughout 2018, Ms. Griffith worked diligently to sign deals with clients and generate revenue for BAMS.

13. As a result of Ms. Griffith’s hard work for BAMS, she far exceeded 150% of her Total In Year Revenue Target. Under the OA Bonus Plan, Ms. Griffith was thus entitled to a payout at a rate of 25% of the “actual revenue in excess” of her Total In Year Revenue Target.

14. However, to date, BAMS has only paid a small portion of Ms. Griffith’s OA Bonus, failing to pay Ms. Griffith her full OA Bonus for 2018, as required by BAMS Sales Plan.

15. On multiple occasions throughout 2018, Ms. Griffith asked her supervisors what her bonus payments would be for the year 2018 given her sales numbers in accordance with the BAMS Sales Plan at different points in time. Ms. Griffith was constantly ensured she would be paid all monies due and owing under the BAMS Sales Plan.

16. After closing a major sale contract in December of 2018, Ms. Griffith was told for the first time that she would not be receiving the full bonus under the BAMS Sales Plan for the fiscal year 2018.

17. In December 2018, after being told she would not be receiving the full bonus payment under the BAMS Sales Plan, Ms. Griffith immediately complained to her supervisors at BAMS that her OA Bonus payout calculation was incorrect and demanded payment of the full payout of the OA Bonus owed to her pursuant to the Sales Plan.

18. In addition, Ms. Griffith hired legal counsel to represent her in her attempt to ensure she was paid her full wages under the BAMS Sales Plan.

19. On February 15, 2019, after Ms. Griffith continued to pursue her complaint regarding BAMS failure to correctly calculate her OA Bonus under the BAMS Sales Plan, BAMS terminated Ms. Griffith in retaliation for her continued complaint and pursuit of wages owed to her by BAMS.

20. Ms. Griffith has been required to retain the law firm of Creed & Hall to represent it in this action and has obligated herself to pay the firm a reasonable fee for its services.

COUNT I - BREACH OF CONTRACT

21. Plaintiff incorporates by reference, and as if fully restated herein, the allegations in Paragraphs 1-20 of the Complaint.

22. This is a cause of action for damages for breach of contract.

23. Plaintiff and Defendant entered into a valid and enforceable contract.

24. Plaintiff has fully performed all her obligations under the Sales Plan and was eligible to receive the OA Bonus.

25. Defendant has breached its Sales Plan with Plaintiff by failing to pay Plaintiff her full due and owing “Over Achievement Bonus” for 2018.

26. Plaintiff has suffered damages as a direct and proximate result of Defendant’s breach of its Sales Plan with Plaintiff.

27. All conditions precedent to the bringing of this action have occurred, been performed, or been waived.

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. Award Plaintiff monetary damages for Defendant’s failure to pay Plaintiff her full due and owing Over Achievement Bonus as contained in Plaintiff’s Sales Plan;
- b. Award Plaintiff’s her attorneys’ fees and costs for recovering her unpaid wages;
- c. Award Plaintiff her prejudgment interest; and
- d. Grant such other and further relief as this Court deems just and proper.

COUNT II - NORTH CAROLINA WAGE AND HOUR ACT

28. Plaintiff incorporates by reference, and as if fully restated herein, the allegations in Paragraphs 1-20 of the Complaint.

29. Each accrued payment due under the Sales Plan and any other form of employment agreement is a “Wage,” as defined by G.S. 95-25.2. Accordingly, Defendant’s OA Bonus payments due and owing to Plaintiff were a “Wage” as so defined.

30. According to the terms of the Sales Plan, the OA Bonus was paid annually, and Plaintiff was to receive her OA Bonus payment from BAMS between 60 to 75 days after December 31,

2018. [See Ex. A.] Thus, Plaintiff was due her full OA Bonus payment between March 1, 2019 and March 15, 2019.

31. In March 2019, BAMS paid Plaintiff a portion of her OA Bonus owed to her under the terms of the Sales Plan. The remainder of the OA Bonus owed to Plaintiff has been intentionally withheld by BAMS.

32. BAMS refused to pay Plaintiff the wages in the form of the remainder of the OA Bonus owed to Plaintiff under the terms of the Sales Plan for 2018 when due in March 2019 and continues to refuse to pay these wages in violation of G.S. 95-25.6.

33. In addition, BAMS terminated Plaintiff in February 2019, which was a willful act to avoid future and past wage payments and to retaliate against Plaintiff for asserting her rights to wage payments.

34. BAMS has willfully failed and refused to pay Plaintiff all wages due on or before the regular/scheduled payday, in violation of G.S. 95-25.7.

35. Plaintiff is entitled to recover from BAMS her wages and other relief, including liquidated damages, attorneys' fees and interest pursuant to G.S. 95-25.22.

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. Award Plaintiff the remained of her wages due to her under the terms of the Over Achievement Bonus as contained in Plaintiff's Sales Plan;
- b. Award Plaintiff liquidated damages in the amount of unpaid wages for BAMS bad faith in failing to pay Plaintiff's all wages owed;
- c. Award Plaintiff's her attorneys' fees and costs for recovering her unpaid wages;
- d. Award Plaintiff her prejudgment interest; and
- e. Grant such other and further relief as this Court deems just and proper.

**COUNT III - VIOLATION OF THE NORTH CAROLINA RETALIATORY
EMPLOYMENT DISCRIMINATION ACT (REDA)**

36. Plaintiff incorporates by reference, and as if fully restated herein, the allegations in Paragraphs 1-20 of the Complaint.

37. During her employment, Plaintiff engaged in statutorily protected expression as Plaintiff exercised her rights by filing a complaint and/or initiating an inquiry regarding the unpaid wages owed to her by BAMS under the Sales Plan pursuant to the North Carolina Wage and Hour Act, Article 2A (G.S. 95-25.21, *et seq.*).

38. After Plaintiff engaged in a statutorily protected expression, she suffered an adverse employment action when BAMS terminated Ms. Griffith's employment in retaliation for her continued complaints and pursuit of unpaid wages owed to her by BAMS.

39. There is a direct causal link between Griffith's complaints/pursuit of her unpaid wages and BAMS's termination of Ms. Griffith, as BAMS terminated Ms. Griffith immediately after she and BAMS were unable to resolve her unpaid wage complaints at an informal settlement conference between BAMS and Plaintiff and her counsel.

40. Accordingly, Defendant violated REDA by, among other things, terminating Plaintiff's employment for her continued complaints and pursuit of unpaid wages owed to her by BAMS pursuant to the North Carolina Wage and Hour Act.

41. Plaintiff has performed all conditions precedent necessary to the maintenance of this action, including but not limited to, the timely filing of a charge of retaliation with the North Carolina Department of Labor ("NCDOL"); receipt of a Notice of Right to Sue from the NCDOL with respect to said charge; and the timely filing of this action. See Exhibit "B".

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. Award Plaintiff compensation for lost wages, lost benefits, and other economic losses that were proximately caused by the retaliatory action, including but not limited to, back wages and back benefits found to be due and owing at the time of trial, front-pay, compensatory damages, and prejudgment interest thereon;
- b. Award Plaintiff treble the amount of damages awarded to her to compensate her for her lost wages, lost benefits, and other economic losses that were proximately caused by BAMS's retaliation due to BAMS willful violation of REDA;
- c. Award Plaintiff's her attorneys' fees and costs for bringing this action;
- d. Award Plaintiff her prejudgment interest; and
- e. Grant such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

On May 29, 2020, I electronically submitted the foregoing document with the Clerk of the Court of the Western District of North Carolina/Charlotte Division using the electronic case filing system of the Court. I hereby certify that I have served all counsel and/or pro se parties of record electronically using the CM/ECF filing system or by any other manner authorized by Federal Rule of Civil Procedure (5)(b)(2).

Respectfully submitted,

By: /s/ Dennis A. Creed, III
Dennis A. Creed, III
Florida Bar. No. 0043618
Creed Law Group, PLLC
d/b/a CREED & HALL
13043 W Linebaugh Ave
Tampa, FL 33626
Telephone: (813) 444-4332
Facsimile: (813) 441-6121
dcreed@creedlawgroup.com
pro hac vice Counsel for Plaintiff

This 2018 Sales Incentive Compensation Plan (“Sales Incentive Plan” or “Plan”) is one of three documents that, taken together, constitute the agreement between Banc of America Merchant Services, LLC (“Company”) and a Participant in the 2018 Sales Incentive Program with respect to sales incentive compensation. The 2018 Sales Goal Document and 2018 Sales Incentive Compensation Opportunity Acknowledgement Form (“Opportunity Acknowledgement Form”) are hereby incorporated into the Plan by this reference. Together, these three documents are referred to as the 2018 Sales Incentive Compensation Program (“Program”). This Program is effective commencing on **January 1, 2018** (the “Effective Date”) and will continue to be effective unless otherwise terminated by the Company.

SECTION A: General Terms and Conditions

Participants in the Program will be eligible to earn the compensation available under the Plan subject to these General Terms together with other conditions imposed under the Program documents and subject to compliance with Company’s policies and procedures.

For the purpose of this Program, “Participant” is defined as an associate who has been offered and has completed a 2018 Sales Incentive Compensation Opportunity Acknowledgement form. Refusal to accept these terms by using either electronic acknowledgment or other approved acknowledgment format in a timely manner will result in an associate being eligible ONLY for their base salary and associate benefits. Participants are not eligible for the Variable Pay Plan or any other incentive plan.

Sales incentive compensation cannot be earned under this Program unless and until all terms and conditions have been fulfilled and no term or condition disqualifies a Participant from earning or receiving sales incentive compensation.

Commissions described in the Plan are earned when the Company is in receipt of payment from the client for the underlying product or services sold. In certain circumstances, the Company may pay commissions to associates earlier than receipt of payment from the client; however, any such payments are not earned until the Company actually receives the payment from the customer. Commission cannot be earned if an associate is no longer employed by the Company. Earned commission ceases based on the payment time frames stated in a Plan document, regardless of whether revenue continues to be earned by the Company for the underlying product or service.

1. **Effective Date (Revision Date):** This Program is effective commencing on January 1, 2018 (the “Effective Date”) and will continue to be effective unless otherwise terminated by Senior Management. For the purpose of administration of this Program, “Senior Management” is defined as the Compensation Practices Committee. This Program cancels, supersedes and replaces all previous incentive programs or arrangements (either verbal or written) in which Participants previously participated.

Case 3:19-cv-00533-RJC-DSC Document 25 Filed 05/29/20 Page 9 of 42 Exhibit A

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For eligible Program Participants who continue to earn incentive from sales activity prior to the Effective Date of this Plan, the incentive plan in effect when the sale was made will continue to be the controlling administrative document.

2. **Eligibility:** Only those individuals who are Participants are eligible to receive compensation under the Program. No associate has the right to or is guaranteed the right to participate in this Program by virtue of being an associate or by filling any specific position within the Company or its affiliates. Selection for and continued participation in the Program is within the sole discretion of Senior Management. The Participant must be in an eligible role for at least thirty (30) days in order to qualify for any commission payments outlined in the Program. Senior Management may terminate any Participant's participation in the Program for any reason and at any time.

An eligible Program Participant can only participate in one (1) sales incentive program at a specific period of time.

Program Participant effective dates:

- Participants currently in a Program eligible job role will have an Effective Date consistent with the effective date of the Program document, subject to completing an Opportunity Acknowledgement Form in a timely manner.
- New hires and associates who transfer into a Program eligible role will become Participants effective on the later of a) first date in the eligible job role and b) first day of the calendar month that includes the date such associate completes the Opportunity Acknowledgement Form. If associate completes an Opportunity Acknowledgement Form within the calendar month of associate's first date in job role, any eligible payment will be retroactive to first date in the job role.

3. **Program Changes:** Senior Management may revise, modify, suspend, amend, or terminate the Program or Program documents, in whole or in part, at any time and without consent by Participants. Senior Management specifically reserves the right to change the Program or Program documents in any manner that may modify or eliminate a component of or the amount of payment of compensation of any type, including commissions, otherwise payable under this Program. The Compensation Practices Committee is the only group authorized to approve Program changes. Participants will be provided written notification in advance of the effective date of any revision, modification, suspension or amendment as required by law.

4. **Termination from Participation in Program:** If a Participant's employment is terminated (either voluntarily or involuntarily) for any reason or if a Participant's participation in the Program is otherwise terminated, he or she will: 1) no longer be a Participant in the Program; 2) only be eligible for incentive compensation up to and including his or her effective date of termination, provided such incentive compensation is then earned according to Program; and 3) not be eligible to earn any incentive compensation after his or her effective date of termination from employment or participation in this Program, including any commissions. Certain exceptions may apply for Participants who are under a separate severance plan agreement.

Because the Company may not have the information needed to calculate payments under this Program at the time of termination, a Participant's final sales incentive compensation payment under this Program will be made after the Participant's last day of employment with the Company on the next regularly scheduled payment for the Plan and Plan component.

Participant Transfers to Variable Pay Plan Eligible Job Role:

Program Participants who continue employment with the Company and transfer to a job role covered by the Company's Variable Pay Plan will be eligible to receive applicable sales incentive payments through their last month of Plan eligibility. The last month of Plan eligibility is the calendar month that includes the last day in the role. Final sales incentive payments will be determined as follows:

- All monthly paid components – final payment: Standard incentive payment calculation will be pro-rated based upon actual days as a Participant prior to the transfer effective date for the final month of Plan eligibility.
- All quarterly paid components – final payment: Standard incentive payment calculation will be pro-rated based upon actual days as a Participant prior to the transfer effective date for the final quarter of Plan eligibility.
- Annual components: To be eligible for payment of an annual incentive component, a Participant must be actively employed by the Company and assigned to a sales incentive eligible job role as of December 31. Pro-rated payments are not earned and will not be paid to associates who are not Participants on December 31.

Once a Participant transfers to a job role not covered by the Program, no sales incentive compensation can be earned or will be paid for a period that extends past the transfer effective date.

Final incentive compensation payments for activities prior to the transfer will be processed and paid with the next regularly scheduled sales incentive payment cycle at the payment frequency of the incentive component – monthly or quarterly.

Participant transfers from Variable Pay Plan eligible job role:

Participants who transfer from a job role covered by the Variable Pay Plan and received notice of participation in the Variable Pay Plan may be eligible for payment under the Variable Pay Plan as provided by the Variable Pay Plan plan document.

Post Employment Termination Incentive Payments:

In Good Standing: Program Participants who terminate employment with the Company in good standing will be eligible to receive applicable sales incentive payments through their last month of Plan eligibility. The last month of Plan eligibility is the calendar month that includes the termination effective date. Final sales incentive payments will be determined as follows:

- All monthly paid components – final payment: Standard incentive payment calculation will be pro-rated based upon actual days as a Participant prior to the termination effective date for the final month of Plan eligibility.
- All quarterly paid components – final payment: Standard incentive payment calculation will be pro-rated based upon actual days as a Participant prior to the termination effective date for the final quarter of Plan eligibility.
- Annual components: To be eligible for payment of an annual incentive component a Participant must be actively employed by the Company and a Participant on December 31. Pro-rated payments are not earned and will not be paid to associates who are not Participants on December 31.

Final incentive compensation payments will be processed and paid with the next regularly scheduled sales incentive payment cycle at the payment frequency of the incentive component – monthly or quarterly.

Once a Participant terminates employment with the Company, no sales incentive compensation can be earned or will be paid for a period that extends past the termination effective date.

Not In Good Standing: Program Participants who terminate employment with the Company (voluntarily or involuntarily) not in good standing will forfeit any final sales incentive payments, unless prohibited by law.

Examples:

Participant voluntarily terminates employment with the Company, in good standing, effective April 16, 2018:

- April 2018 monthly incentive:
 - Sales incentive calculation - Plans effective prior to 1/1/2018: \$1,500
 - Sales incentive calculation - 2018 Sales Incentive Plan: \$2,800
 Total: \$4,300
- Quarter 2 2018 quarterly incentive:
 - Sales incentive calculation - 2018 Sales Incentive Plan: \$1,600
- April 2018 incentive calculation payment is pro-rated based upon the number of calendar days worked:
Monthly 50% (15/30= 50%); quarterly 16.48% (15/91=16.48%)
- Final sales incentive payment: \$2,413.68
 - Monthly components: \$2,150.00 (\$4,300 * 50%)
 - Q2 Quarterly component: \$ 263.68 (\$1,600 * 16.48%)
- No incentive compensation payment is due for annual incentive components
- Prorated final 2018 incentive compensation amount for April 2018 is submitted for payment with the next regularly scheduled incentive payment process. All incentive payment calculation and timing subject to the specific Participant Plan.

Participant voluntarily terminates employment with the Company, in good standing, effective September 22, 2018:

- September 2018 monthly incentive:
 - Sales incentive calculation - Plans effective prior to 2018: \$1,500
 - Sales incentive calculation - 2018 Sales Incentive Plan: \$2,800
- Total: \$4,300
- Quarter 3 2018 quarterly incentive:
 - Sales incentive calculation - 2018 Sales Incentive Plan: \$2,800
- September 2018 incentive calculation payment is pro-rated based upon the number of calendar days worked for the month (21/30= 70%) and quarter, if applicable (83/92=90.22%)
- Final sales incentive payment: \$5,536.16
 - Monthly components: \$3,010.00 (\$4,300 * 70.00%)
 - Q3 Quarterly component: \$2,526.16 (\$2,800 * 90.22%)
- No incentive compensation payment is due for annual incentive components
- Prorated final 2018 incentive compensation amount for September 2018 is submitted for payment with the next regularly scheduled incentive payment process.

Participant involuntarily terminates employment with the Company due to a customer related code of ethics violation.

- Participants cannot earn sales incentives during any time period when the Participant was acting in violation of the BAMS code of ethics. Upon the direction of Senior Management, the Company will recoup all advanced amounts which were not earned as a result of the code of ethics violation.

Participant terminates employment with the Company due to an activity or failure to act that constitutes Gross Misconduct:

- Participants cannot earn sales incentives during any time period when the Participant was engaging in Gross Misconduct. Upon the direction of Senior Management, the Company will recoup all amounts which were not earned as a result of the Gross Misconduct.
- Due to the Gross Misconduct, the Participant will not have the right to continue any BAMS sponsored insurance coverage that would otherwise be available under COBRA.

5. **Disqualification from Compensation:** A Participant's compliance with the Company's Code of Ethics and all other policies, rules and procedures is a prerequisite to eligibility for an incentive compensation payment. Participants are expected to conduct themselves in an ethical manner at all times while performing services under this Program and to abide by all Company policies.

Participants who: 1) engage in misrepresentation, fraud, dishonesty, violation of law, or other unethical behavior; 2) violate any other Company policy, including the Company's Code of Ethics and Associate

Handbook performance guidelines; or 3) fail to comply with any applicable booking, pricing, sales or other similar policies are not entitled to receive compensation or credit that would otherwise be earned under this Program and will forfeit any final sales incentive payment, unless prohibited by law.

Participants whose actions or failure to act constitutes Gross Misconduct are disqualified from any sales compensation not yet paid. Such participants are not entitled to any BAMS sponsored insurance coverage that would otherwise be available under COBRA.

6. **Interpretation and Administration:** Senior Management will have the sole and absolute discretion to interpret and administer the Program and Program documents. In addition, Senior Management will have the final, sole and binding decision-making authority with respect to the Program. Program commitments or interpretations (oral or written) by anyone other than Senior Management are invalid and will have no effect on the policies, terms and conditions, and procedures set forth in the Program.

7. **Split or Multiple Sales Credits:** The Company may require a Participant to split sales credit for a given sale with another associate(s) whose efforts, in Senior Management's sole discretion, contributed to securing such sale. Senior Management may award multiple sales credit for a given sale to associates other than the Participant whose efforts, in Senior Management's sole discretion, contributed to securing such sale. In either case, the amount of incentive compensation due, if any, will be determined on a case-by-case basis, at Senior Management's sole discretion, and aligned with the established sales incentive compensation exception review and approval process.

8. **Leave of Absence:** During a leave of absence, the following apply:

(a) **Sales Incentive Compensation Payments:** Eligible Program Participants who are approved for and covered by an approved paid leave of absence will continue to participate in the Program and receive any applicable Program payments.

Paid leave of absence is defined as any approved formal leave of absence status/program defined by the Company where an associate receives a full or partial payment of base pay by the Company or Short-Term Disability provider.

Eligible for paid leave of absence:

- Short Term Disability (pending approval by insurance provider)
- Bereavement Leave
- Maternity Leave
- Paternity Leave
- Adoption Leave
- Jury Duty Leave
- Military Leave



Note: the above section deals with paid leaves of absence as defined. A leave of absence (LOA) is a period of time that one must be away from one's primary job, while maintaining the status of employee. This contrasts with normal periods away from the workplace, such as vacations, holidays, hiatuses, sabbaticals, and "working from home" programs, in that they are considered exceptional circumstances, rather than benefits. Generally such an arrangement has a predefined termination at a particular date or after a certain event has occurred.

Eligible for leave of absence unpaid by Company (during which a Participant does not continue to participate in or receive payments under the Program):

- Personal Leave not covered by available vacation time
- Unpaid portion of a FMLA leave
- Pregnancy / Paternity Disability Leave (California) not covered by sick leave or vacation time
- Domestic Violence Leave
- Parental / Guardian Leave

Long-Term Disability: Program Participants who are approved for and covered by Long-Term Disability are not eligible to participate in the Program and, therefore, are not eligible to receive any Program payments. Program participation and payments will resume upon return to work from Long-Term Disability. Any Program payments missed while on approved and covered Long-Term Disability will not be paid nor will any payment period be extended upon return.

(b) Receipt of Company/State Disability Benefit or Workers Compensation Payments: In the event Participant is receiving disability benefits pursuant to the Company benefit Plans (e.g. short-term disability), or state paid disability programs and/or is receiving payments pursuant to state workers compensation law, payment under this Program will be coordinated with benefits received so that the Participant is not receiving duplicate payments.

(c) Performance Goals: Performance goals/quotas and incentive targets, set forth in this Program may be adjusted upon return from certain approved leaves of absence.

9. Discrepancies or Disputes: All Participants who claim there is a discrepancy in any pay received under the Program or who otherwise dispute any payment under this Program must submit a written dispute for review within a reasonable amount of time, but no later than 120 days or such time as allowed by law, from the scheduled date of payment receipt. Sales incentive compensation discrepancy processes vary by business unit; ask your manager for details of the applicable process. Senior Management's review and decision regarding the dispute will be final and binding on the Participant or person claiming payment under the Program.

10. Windfalls: The Company may review the Program from time to time and may make adjustments to ensure payout amounts, payout criteria, and calculation methods are consistent with the Company's goals and objectives. Senior Management will have the sole discretion to determine whether payment in a given case

would constitute a “windfall”, whether payments will be made to any Participant for such windfall, and the amount of such payment, if any. Windfalls generally will be defined as:

- Events that otherwise would be compensable under this Program but which resulted from little or no activity by the Participant; or
- Events that are significant in nature; or
- Events that are not anticipated; or
- Low margin events where the sales incentive compensation payment is inconsistent with BAMS profitability expectations

House accounts generally will be considered “windfalls.”

11. **Funding:** This Program is unfunded and the payment of sales incentive compensation under the Program will be subordinate to claims of the Company’s general creditors.

12. **Company Property:** An associate is obligated to return all Company property at the time of termination. Until such property is returned, the Company can withhold unpaid commissions, as allowed by applicable state and local law.

13. **Other Incentive Programs:** Except as expressly provided in a written supplement to this Program, Participants in this Program are excluded from participation in all other Bank of America Merchant Services incentive compensation plans, including, but not limited to, the Bank of America Merchant Services Variable Pay Plan.

14. **Other Provisions:** Any terms and conditions or other items not addressed above or elsewhere in the Program will be determined in Senior Management’s sole discretion.

15. **Risk Management:** The Company’s sales incentive compensation Programs are designed in such a manner as to ensure that Program Participants are not encouraged to take unnecessary or excessive risks. All Program Participants are subject to all Company standards that have been implemented (including but not limited to Company’s Code of Ethics and Associate Handbook), or may be implemented in the future, to ensure that Program Participants do not take any actions that would encourage or result in any excessive or unnecessary risk. Participants are accountable for results from internal and external audits, self-testing, regulatory exams, and other risk reviews.

Participants who: 1) engage in misrepresentation, fraud, dishonesty, violation of law, or other unethical behavior; 2) violate any other Company policy, including the Company’s Code of Ethics and Associate Handbook performance guidelines; or 3) fail to comply with any applicable booking, pricing, sales or other similar policies may not be entitled to receive compensation or credit that would otherwise be earned under this Program.

A Participant who fails to adhere to the standards noted above or engages in behavior that exposes the Company to inappropriate or excessive risk may also be determined to be ineligible to earn sales incentives during any period during which the Participant engaged in inappropriate behavior, and any erroneous

payment made may be subject to recoupment, clawback or recovery of sales incentive compensation payments.

16. **Non-payment or Recoupment of Funds:** The Company reserves the right not to pay, recoup funds or offset from future payments all or a portion of any sales incentive compensation payment under this Program if it is determined that any earnings were derived from one of the following issues:

- Program Participant is disqualified per the criteria detailed in Section 5 General Terms and Conditions
- Program Participant is disqualified per the criteria detailed in Section 15 General Terms and Conditions
- Sales incentive compensation calculation errors and adjustments, such as an error in a paid commission calculation resulting in an overpayment to a Participant
- Churning

The following examples are provided for additional illustrative purposes:

Program participation disqualification: An associate acts in an un-ethical manner by creating a fraudulent new customer merchant account.

Violation of Program risk management guidelines: An associate signs an existing customer for products and services the customer has not requested or approved.

Sales incentive compensation calculation errors: Associate makes a new customer boarding process error, resulting in associate's sales code incorrectly being noted on a new customer account, resulting in associate wrongfully beginning to earn sales incentive compensation credit.

Recoupment of Funds: In the event it is determined that a recoupment of funds is required, the Company reserves the right to recoup funds from one or more of the following:

- Sales incentive compensation payments not yet paid
- Activation draws
- New hire guarantee
- All Plan components identified as recoverable (e.g. Signing Draw)
- Any non-standard sales incentive related payments

In the event the Company returns or refunds payments received from merchants or suppliers for products or services, associated commissions are no longer considered earned and will be eligible for recoupment.

17. **Covered Associates:** Participants, who are identified as subject to the Company's Covered Associates and Control Partner Feedback program and found not in full compliance, are subject to potential sales incentive compensation adjustments, including those set forth in Section 16 of this document.

18. **Nondisclosure:** Company requires all associates and Participants to protect its trade secrets and confidential information. The Company's trade secrets and confidential information include, but are not limited to, customer lists, customer contact information and preferences, prospect lists, prospect and

marketing research materials, technical information, business information and plans and manner of conducting business, price lists, associate lists and confidential information regarding Company associates, and similar information where such information is not publicly available and could be used in order to gain competitive advantage ("Confidential Information"). Each Participant, by his or her signature on the Sales Incentive Compensation Opportunity Acknowledgement form, agrees that during his/her employment and after the cessation of employment, the Participant will use Confidential Information only for the benefit of the Company. Participant further agrees that, except as authorized by the Company during the course of employment, Participant will not, at any time during or after cessation of employment, use, disclose, or disseminate to any other person, organization, or entity or otherwise employ any of the Company's Confidential Information. The obligations set forth in this paragraph do not apply to any trade secrets or Confidential Information which have become generally known to competitors of the Company through no act or omission of the Participant.

19. **Non-Solicitation of Clients:** To protect the Company's interests in its client relationships, and in its trade secrets and Confidential Information that Participants have or will have access to (including but not limited to information pertaining to Company's clients and the representatives of those clients, their names and addresses, specific customer needs and requirements, and leads and references to prospective clients) each Participant, by his or her signature on the Sales Incentive Compensation Opportunity Acknowledgement form, agrees that, for 12 months after the cessation of employment, the Participant will not solicit or attempt to solicit any client or prospective client of the Company for the purpose of providing any products and services similar to those that the Participant sold or attempted to sell on behalf of the Company. This restriction will apply only to any client or prospective client of the Company with whom the Participant had contact or about whom/which the Participant learned trade secrets or Confidential Information, during the last 24 months of employment with a business unit of the Company. For the purpose of this paragraph, "contact" means interaction between Participant and the client, former client, or prospective client, which takes place to further the business relationship, or making sales to or performing services for the customer, former client, or prospective client on behalf of the Company.

20. **Non-Solicitation of Associates:** To protect the Company's interests and information as described above, each Participant, by his or her signature on the Sales Incentive Compensation Opportunity Acknowledgement form, agrees that during employment with the Company and for 24 months after the cessation of employment with the Company, the Participant will not recruit, or attempt to recruit or hire, directly or by assisting others, any other associate of the Company with whom the Participant had contact or about whom the Participant learned trade secrets or Confidential Information during their last 24 months of employment with the Company. For the purposes of this paragraph, "contact" means any business-related interaction between two associates.

21. **Dispute Resolution:** The terms and conditions of this Plan and the Program shall be construed in accordance with and governed by the laws of the state of North Carolina, without giving effect to its conflict of laws rules and provisions. In the event of a dispute arising out of this Plan, the Program, or Participant's employment or the termination thereof, Company and Participant irrevocably submit themselves to the



jurisdiction of the state and federal courts serving Mecklenburg County, North Carolina, and waive any objection to that exclusive venue and/or right they have or may have to proceed in any other jurisdiction or venue. The preceding sentence setting the jurisdiction of courts for resolving disputes does not apply to associates who primarily reside and work in any of the following states: California, Idaho, Louisiana or Montana.



SECTION B: Plan Incentive Information and Calculation Description -

Large Corporate Business Consultant

Applicable to the following Job Codes:

- 411SD : BUSINESS CONSULTANT-LARGE CORPORATE CLIENTS

2018 Sales Incentive Plan Purpose

The purpose of the 2018 Sales Incentive Plan is to reward eligible Sales Incentive Plan Participants for the successful sale and implementation of applicable products and services to new and existing customers aligned with the overall business and sales strategy of Bank of America Merchant Services (BAMS).

2018 Sales Incentive Plan Objectives

- Emphasize Recurring Revenue/New Sales
- Strengthen customer retention via contract renewals
- Align scorecards to 2018 business strategy

2018 Key Plan Components:

Component	Element	Frequency
Commission	<p>Commissions paid on:</p> <ul style="list-style-type: none">• New Business and Cross Sell• Technology / POS / Non-Recurring Revenue• Premium Plastics	Monthly
Balanced Scorecard	<ul style="list-style-type: none">• \$40,250 Annual Scorecard Target• 25% Signed Sales• 15% International Signed Sales• 50% Contract Renewal or Y1 & Y2 Revenue• 10% Balanced Risk Performance	Quarterly
Over Achievement Bonus	<ul style="list-style-type: none">• Over Achievement of Total In Year Revenue Goal	Annual



Component Detail

- **Monthly Commission:**
 - **Signing and Activation Draws**
 - **5% Signing Draw** - calculated on forecasted revenue once opportunity meets Written Mandate Verified status in SalesForce.com (SFDC)
 - **5% Activation Draw** - calculated on forecasted revenue once opportunity meets Closed Won status in SFDC
 - All draws are recoverable if revenue is not recognized
 - Paid monthly for **13 months** on recurring net revenue
 - Recurring revenue commission paid for New Business and Cross Sell
 - For Revenue Share Products – commission is paid on revenue x revenue multiplier (example below)
 - Forecasted net revenue **less than \$100,000 per year**: 13 month period beginning with the calendar month the account activates.
 - For all opportunities with forecasted net revenue of **\$100,000 per year or more**, the commission start period will be adjusted to accommodate extended ramps. Commissions will begin in the **fourth** calendar month following the activation month (i.e. activation = January, first commission payment = May commission period paid in July). In this instance, the 13 month period also begins in the fourth calendar month following activation. The extension of this date ensures BCs receive full credit and incentive for larger deals.

BC Commission Rates	Cross Sale	New Business
Core Acquiring / eCommerce (Core)	5%	15%
Other Product Revenue (OPR)	5%	15%

- **Example:**
 - Example opportunity with forecasted revenue = \$120,000
 - **Signing Draw**
 $\$120,000 \times 15\% \text{ (Commission rate)} = \$18,000 \times 5\% \text{ (commission draw at signing)} = \900
 - **Activation Draw**
 $\$120,000 \times 15\% \text{ (Commission rate)} = \$18,000 \times 5\% \text{ (commission draw at activation)} = \900
 - **Commissions**
 $\$10,000 \text{ Actual New Business Monthly Revenue} \times 15\% \text{ commission rate} = \$1,500 \text{ incentive calculation}$
Commission Month 1 Payout = \$0, \$1,500 less draw payments of \$1,800 = -\$300
Commission Month 2 Payout = \$1,200, \$1,500 less draw balance of \$300
Commission Month 3 thru 13 Payout = \$1,500



Total Commission Paid

\$1,800(draws) + \$0 (Month 1) + \$1,200 (Month 2) + \$16,500 (\$1,500 Month 3-13) = **\$19,500**

- **Revenue Share Example**
 - Example new business opportunity with forecasted revenue = \$120,000
 - \$10,000 Actual New Business Monthly Revenue x 20% Revenue Share Multiplier as reported in SFDC PriceBook (e.g. Relevant Search) x 15% commission rate = \$300 incentive calculation
Commission Month 1 thru 13 Payout = \$300 per month
 - Total Payout = \$300 Months 1-13 = **\$3,900**
 - Recurring revenue is credited either at net or gross revenue based on product and is applied towards Recurring revenue goal
- **Technology / Point of Sale (POS) / Non-Recurring Revenue Commission:**
 - **10% commission** on margin, capped at \$50,000 on a single nonrecurring transaction
 - **Technology / Point of Sales (POS)**
 - TASQ facilitated purchases less than \$100,000 in aggregate sales price = Assumed 25% Margin.
 - TASQ facilitated purchases greater than or equal to \$100,000 in aggregate sales price OR purchases utilizing another vendor = actual margin
 - One-time payment following verification, in accordance with Plan timeframes
 - Payment trigger:
 - For less than \$100,000, payment calculated with Closed Won status in SALESFORCE.com (SFDC)
 - For greater than or equal to \$100,000, Closed Won status will trigger verification of deployment and margin
 - Actual margin is confirmed with data from Finance
 - Non-Recurring items are credited at gross revenue towards Non-Recurring Revenue goal
- **Other Non-Recurring Revenue**
 - One-time payment following verification of actual margin, in accordance with Plan timeframes
 - For non-recurring revenue associated with First Data (or other third party) development efforts, commission will be paid on verified margin, with evidence of billing and evidence that the appropriate legal review and approval has taken place
 - Payment trigger:
 - Closed Won status will trigger verification of billing to customer and margin.
 - Non-Recurring items are credited at gross revenue towards Non-Recurring Revenue goal



- **Example**
- $\$50,000 \text{ Revenue} \times 25\% \text{ margin} = \$12,500$ margin $\times 10\% \text{ commission} = \$1,250$
- $\$200,000 \text{ Revenue} \times 10\% \text{ (actual margin)} = \$20,000$ Margin $\times 10\% \text{ commission} = \$2,000$
- $\$250 \text{ one-time fee} \times 25\% \text{ margin} = \62.50 margin $\times 10\% \text{ commission} = \6.25
- **Premium Plastics and Card Management Fees Commission:**
 - **Premium Plastics: 5% commission** paid on verified margin of premium plastics order. Margin verified by Finance.
 - **Card Management Fees: 5% commission** paid on one-time fee less ($\$0.015 * \# \text{ of cards}$)
 - One-time payment following verification, in accordance with Plan timeframes
 - Payment trigger: Closed Won status and verified margin / validation of expense to BAMS
 - Standard Plastic not eligible for Premium Plastics commission
 - Non-Recurring items are credited at gross revenue towards Non-Recurring Revenue goal
- **Example**
- Premium Plastics: $\$200,000 \text{ Revenue} \times 10\% \text{ (actual margin)} = \$20,000$ Margin $\times 5\% \text{ commission} = \$1,000$
- Card Management Fees:
 - Client has 5,000 cards; card management fee is \$.02 per card
 - $\$100 (5,000 \times .02 = \$100)$ less $\$75 (5,000 \times \$0.015 = \$75) = \$25 \times 5\% \text{ commission} = \3.75
- **Balanced Scorecard:**
 - **Annual Incentive Target = \$40,250**
 - Calculations are based on achievement to the following goals:
 - Signed Sales achievement to goal
 - International Signed Sales achievement to goal
 - Contract Renewal Matrix or Revenue: Recurring & Non-Recurring (Y1 & Y2)
 - Balanced Risk Performance evaluation



Job Role - Contract Renewal Opportunity:

The 2018 Scorecard components and weightings are:			
25%	15%	50%	10%
% of Quarterly Signed Sales (YTD Q4) Goal Achieved	% of Quarterly International Signed Sales (YTD Q4) Goal Achieved	Contract Renewal Performance Matrix (Quarterly)	Balanced Risk Performance (Quarterly)

Job Role – No Contract Renewal Opportunity:

The 2018 Scorecard components and weightings are:			
25%	15%	50%	10%
% of Quarterly Signed Sales (YTD Q4) Goal Achieved	% of Quarterly International Signed Sales (YTD Q4) Goal Achieved	% of Quarterly Revenue: Recurring & Non-Recurring – Y1 & Y2 (YTD Q4) Goal Achieved	Balanced Risk Performance (Quarterly)

- Signed Sales Revenue, Revenue – Recurring & Non-Recurring, and International Signed Sales Revenue: Components are calculated each quarter on a stand-alone performance basis, and capped at 100% in Q1, Q2, and Q3 with a true up in the Q4/YTD scorecard. Any calculation that results in a negative amount will result in the recovery of prior quarter payments.
- In the event a BC does not have an International Signed Sales goal, the scorecard percentage assigned to the scorecard element will default to the domestic component. Example: Quarterly Signed Sales = 40%, International Signed Sales = 0%
- Paid quarterly
- Per grid



2018 Payout Grid			
*Payout Capped at 100%: Q1-Q3			
Achievement to Goal		Payout % Q1-Q3	Payout % Q4
0% to	64.99%	0.00%	0.00%
65% to	99.99%	Actual	Actual
100% to	104.99%	100.00%	100.00%
105% to	119.99%	100.00%	110.00%
120% to	129.99%	100.00%	120.00%
130% to	149.99%	100.00%	135.00%
150% and	->	100.00%	150.00%

**Balanced Risk Performance component is capped at 100%

Contract Renewal Component: Annual target incentive opportunity - \$20,125

- Defined as a formal, documented and executed extension of an existing client's contract for a period of 24 months or more; whether done via an amendment or an altogether new, replacement agreement. Performance information captured when SFDC contract status = "Complete Signed".
- Calculations are based upon the following key performance criteria:
 - Average annual revenue of the contract renewal
 - Length of contract renewal
 - Contract renewal compression
- One-time payment upon verification that the contract renewal has been finalized and management approved. Quarterly payment will be the total value of approved one-time payments applicable to the quarter based upon "Complete Signed" SFDC contract status date.
- Compression Payment Modifier: Matrix payment amount will be adjusted based upon the compression % of the approved contract renewal
- Paid quarterly
- Total plan year payments for this component cannot exceed three (3) times the annual target incentive opportunity amount for the component
- Contract Renewal Payment Matrix:



2018 Contract Renewal Matrix:
Large Corporate BC

Average Annual Revenue	<u>Contract Renewal:</u> < 3 Years	<u>Contract Renewal:</u> 3 - 4 Years	<u>Contract Renewal:</u> 5+ Years
< \$100,000	\$0	\$800	\$1,200
\$100,000 - \$250,000	\$0	\$1,300	\$2,000
\$250,001 - \$500,000	\$0	\$2,300	\$3,500
\$500,001 & Above	\$0	\$3,600	\$5,600

Examples:

- Contract renewal with average annual revenue of **\$175k for 3 years, 5% compression.**
Contract renewal payment: \$1,235 (\$1,300 * 95%)
- Contract renewal with average annual revenue of **\$325k for 5 years, 20% compression.**
Contract renewal payment: \$2,800 (\$3,500 * 80%)

Balanced Risk Performance:

- Balanced Risk Performance is determined independently on a quarterly basis and capped at 100%. There is not an YTD true up for this component, nor is the payout grid applicable for this element.
- Balanced Risk Performance is a measure of an associate's sales practices and behaviors and is intended to ensure that associates engage with clients responsibly and in a risk-appropriate manner. Each quarter, managers and business partners will review the actions of associates to determine if their actions have been appropriate. Questions that may be part of that review include, but are not limited to:
 - Has the associate followed all sales processes and procedures during the quarter?
 - Has the associate made any offers to clients or potential clients with the appropriate level of approval from partners such as Finance and Legal?
 - Has the associate provided the correct level of information, accurately, to Risk and Compliance partners for the evaluation of Risk?
 - Has the associate used approved materials (marketing, legal)?
 - Has the associate completed all required compliance training?
- Paid quarterly basis



- Sample calculation – Q2 (Revenue)
- \$40,250 annual target (\$10,062.50 per quarter, target figure is for sample purposes only)

2018 Quarterly goal attainment: Job Role – No Contract Renewal Opportunity

<u>Component</u>	<u>Weighting</u>	<u>Wtd Incentive Target</u>	<u>Quarterly Metric Achievement %</u>	<u>Grid Payout Rate %</u>	<u>Quarterly Incentive Payout</u>
Signed Sales Revenue	25%	\$2,515.63	105%	100%	\$2,515.63
International Signed Sales Revenue	15%	\$1,509.38	115%	100%	\$1,509.38
Revenue: Recurring & Non-Recurring (Y1 & Y2)	50%	\$5,031.25	120%	100%	\$5,031.25
<u>TOTAL:</u>	90%	\$9,056.25			\$9,056.25 100%

2018 Q2 Quarterly goal attainment:

	<u>Achievement</u>
Balanced Risk Performance evaluation	90.00%

<u>Component</u>	<u>Weighting</u>	<u>Wtd Incentive Target</u>	<u>Quarterly Metric Achievement %</u>	<u>Payout Rate %</u>	<u>Quarterly Incentive Payout</u>
Balanced Risk Performance evaluation	10%	\$1,006.25	90%	90%	\$905.63
<u>TOTAL:</u>	10%	\$1,006.25			\$905.63 90%



Year-End YTD True-up Example (Revenue)

- Sample calculation
 - \$40,250 annual target (\$10,062.50 per quarter, target figure is for sample purposes only)
 - Example of attainment to the following goals in 2018

<u>Component</u>	<u>Weighting</u>	<u>Annual Wtd Incentive Target</u>	<u>Annual Metric Achievement %</u>	<u>Grid Payout Rate %</u>	<u>Annual Incentive Calculation</u>	<u>YTD Quarterly Payments</u>	<u>Year-End YTD True-up Incentive Payout</u>
Signed Sales Revenue	25%	\$10,062.50	110%	110%	\$11,068.75	\$7,000	\$4,068.75
International Signed Sales Revenue	15%	\$6,037.50	112%	110%	\$6,641.25	\$4,200	\$2,441.25
Revenue: Recurring & Non-Recurring (Y1 & Y2)	50%	\$20,125.00	123%	120%	\$24,150.00	\$12,500	\$11,650.00
<u>TOTAL:</u>	90%	\$36,225.00			\$41,860.00 115.56%		\$18,160.00

2018 Year-End Quarterly goal attainment:

Achievement

Balanced Risk Performance evaluation 90.00%

<u>Component</u>	<u>Weighting</u>	<u>Wtd Incentive Target</u>	<u>Quarterly Metric Achievement %</u>	<u>Payout Rate %</u>	<u>Quarterly Incentive Payout</u>
Balanced Risk Performance evaluation	10%	\$1,006.25	90%	90%	\$905.63
<u>TOTAL:</u>	10%	\$1,006.25			\$905.63 90%



- **Over Achievement Bonus (OAB):**

- Paid on actual revenue in excess of goal IF:
 - 110% or greater of Total In Year Revenue Target is Achieved AND
 - Meet or Exceed YOY Recurring Revenue Growth target

Over-Achievement Bonus	
% of Goal Achieved	Payout Rate %
0 – 109.99%	0%
110% - 124.99%	10%
125% - 149.99%	20%
150% +	25%

- Paid Annually
- **Example**
- Total In Year Revenue Target = \$200,000
- Total In Year Revenue Actual = \$250,000
- YOY Portfolio Target = 5%
- YOY Portfolio Actual = 5%
- Did associate achieve 110% or greater of Total In Year Revenue Target?
 - $250,000 / 200,000 = 125\% = \text{YES}$
- Did associate meet or exceed YOY Portfolio Target?
 - $5\% / 5\% = 100\% = \text{YES}$
- $250,000 - 200,000 = 50,000$ revenue excess over goal
- Payout per grid on 125% = 20%
- Payout = $\$50,000 * 20\% = \$10,000$



SECTION C: Additional Terms and Conditions –

Client Managed

1. **Activation Date:** The activation date used for incentive calculation is the “Live Date” reflected in SalesForce.com (“SFDC”). Sales stage must be “Closed / Won”.
2. **Canceled or Lost deals:** If an Opportunity is moved to “Closed Won – Lost” or “Closed Won – Canceled” in SFDC, any unearned commission payments such as signing or activation payments will be recouped.
3. **“Commission Clock”:**
 - An opportunity is eligible for payment under this Plan if the deal has achieved the Written Mandate Verified sales stage while the Plan is in effect.
 - National Partner Sales Only:
 - Opportunities not activated within 6 full months after the deal has achieved the Written Mandate Verified sales stage are no longer eligible for Activation SPIF.
 - Recurring commission payments begin in the month following Activation and continue for 12 months (months 2 through 13). Example: A deal activates in January 2018, commissions are calculated beginning February, 2018 and the following twelve months, through January, 2019.
 - Opportunities not activated within 18 months after the deal has achieved the Written Mandate Verified sales stage are no longer eligible for payment.
 - All Other BC Plans:
 - Opportunities not activated within 18 months after the deal has achieved the Written Mandate Verified sales stage are no longer eligible for payment.
 - If an Opportunity is not activated within 12 months from the date of being moved to Written Mandate Verified, any signing payment will be recouped.
 - For Opportunities less than \$100,000, commission payments begin in the month of Activation and continue for 12 months, for a total of 13 months of payment. Example: A deal activates in January 2018, commissions are calculated beginning January, 2018 and the following twelve months, through January, 2019.
 - For opportunities greater than or equal to \$100,000, commission payments begin in the fourth month following the activation month. Commissions are then paid for the next 12 months, for a total of 13 months of payment. Example: A deal activates in January 2018, commissions are calculated beginning with May, 2018 activity and the following twelve months, through May, 2019. Opportunities not activated within 18 months after the deal has achieved the Written Mandate Verified sales stage are no longer eligible for payment.



4. **Commission on Global Clients:** Commission on Global Clients are driven by deal participation levels. Participation levels are determined by the Sales Executive(s) involved. In the event of a dispute, the Company's CFO will determine the final participation levels.

Global Client participation level guidelines:

- **Lead / Support Sale:** The BC who is primarily responsible for deal closure is paid at 100% of applicable commission rate from BC's plan, while the additional BC who supported the effort is paid at 50% of applicable commission rate from BC's plan.
- **Shared Sale:** Each BC's participation in the deal closure is equal or near equal. In this circumstance, each BC is paid at 100% of applicable commission rate from their plan.

5. **Commission on Revenue Share products:** Some products are commissioned on the gross amount charged to the merchant, while others are commission based on the revenue share to BAMS. Refer to the "Revenue Share Multiplier" in the SFDC price book to determine how commission is calculated on specific revenue share products.

6. **Exclusions:**

- Pilot programs and sales campaigns are excluded from payment under this Program
- Standard Gift Card and Plastics are not independently commissionable. If revenue is received on an account that is commission eligible, then the revenue from Standard Gift Card / Plastics will be included in the commission calculation.
- Commissions will not be paid nor will sales revenue credit be provided on products until they are listed as approved products in the SFDC pricebook, with all underlying approvals and executed agreements finalized.

7. **Lease Commission Recoup:** In the event of a lease buyback or cancellation, any commission paid on the underlying lease will be recouped, and no revenue credit calculated.

8. **Management Discretion:**

- At any time and within the BAMS sales plan governance process and exception guidelines, Senior Management has the sole discretion to modify or amend for any reason on a case-by-case basis the following, **but not limited to:** sales crediting, incentive payment mechanisms (e.g. commission rates, flat payment(s), payout/modifier grids & tiers, incentive targets, goals, caps, etc.), associate incentive payment, prorated goals and/or incentive targets for associates commencing participation in the Plan.
- Commission is earned when the Company is in receipt of payment for the underlying product or services sold from the merchant client. The Company reserves the right to validate payment for a product or service prior to issuing commission payment.

9. **Merchant Signing Bonus:** Any signing bonus will be deducted from revenue used in incentive calculations. In certain circumstances the signing bonus expense will be amortized over the life of the contract. In that event, the monthly amortization amount will be subtracted from the monthly revenue amount prior to the calculation of commissions on net revenue. Finance will provide amortization details, if applicable.



10. **Missed SFDC Entry:** The Program relies on Business Consultants entering opportunities in a timely manner into SFDC. To be captured appropriately for incentive, all opportunities should be entered prior to the opportunity reaching the Written Mandate Verified sales stage. Any opportunity entered more than 30 days after contract signing will be considered a missed SFDC entry. A SFDC case must be submitted for identification and appropriate action on the event.

- Signing and Activation Draws: Eligibility for a signing or activation draw will be forfeited in the event of a missed SFCD entry.
- Commission Clock: The Commission Clock will be set to when the SFDC entry should have been Written Mandate Verified based on approval and/or contract signing. If the Commission Clock should have started, any incentive earned prior to entry will be forfeited. Example: A deal is signed in January, 2018 and should have a matching Written Mandate Verified date in that month. The deal activates in February, 2018 and payments would normally have started based on that month of processing. The SFDC case on the missed entry arrives in April, 2018 the Commission Clock is set to February, but commissions are only paid for the remaining months starting with April, 2018 activity and continues through February, 2019.

11. **New Business Commission Eligibility:** New Business commissions are paid on Year 1 Opportunities to account for incremental revenue to BAMS. New Business commissions will not be paid on non-incremental opportunities sold into base.

- Year 1 is a Finance term which indicates that BAMS recognizes this sale as incremental revenue not due to organic growth. Certain products are considered “Financial Age Dependent” products and must be classified by Finance as Y1 to be incentive eligible. The current list of financial age dependent products is located in the SFDC pricebook.
- Increasing coverage of an existing product to new locations or divisions and additional locations, or additional features/entitlements to an existing product (such as adding pin debit to credit acceptance) are generally categorized as organic growth and would enhance Portfolio Performance.
- Additional Locations are not considered a Cross Sale, do not qualify for commissions and should not be entered into SFDC.
- Exception to incentive eligibility – Reclassification with finance: When a BC sells a product that is incremental revenue and it does not meet the Year 1 definition set forth by Finance, a request to Finance to reclassify the revenue as Year 1 may be submitted through a Case in SFDC. The following criteria must be met:
 - \$1,000 minimum revenue.
 - The deal must meet the Written Mandate/Verified criteria in SFDC.



- The BC must have been involved in sales activity.
- The revenue must be able to be isolated and tracked through a MID.
- The BC must be able to show the revenue is incremental.

An example of what would qualify:

- Merchant ABC processes card acceptance with BAMS today for its East Division. The West Division was not a part of the contract and has gone out to RFP. The BC wins the West Division business. This is incremental business driven by sales activity and would qualify for the reclassification process.

An example of what would not qualify:

- Merchant ABC processes card acceptance with BAMS today. The merchant goes through an expansion and boards additional locations to BAMS as those locations open throughout the country. These would be additional location and would not qualify for the reclassification process.

12. **New Hire Quarterly Payments:** If a Participant on a Plan with a quarterly calculation element such as a scorecard is hired within the quarter, the quarterly payment will be pro-rated based on their start date and paid at 100% subject to Participants formal acceptance of the Plan terms. Beginning with the first full quarter of employment, the standard calculation will apply.

13. **Online Acknowledgement:** BAMS uses an online acknowledgement form and electronic signature process through the incentive administration tool, Xactly. Participants are required to read all Plan documents, enter Xactly, electronically sign, date and complete the Opportunity Acknowledgement Form. Additional instructions for use of the Online Acknowledgement tool will be provided.

14. **Overachievement Bonus:** Large Corporate: Annual overachievement bonus is calculated after the close of the year and paid 60-75 days in arrears of 12/31. Participants must be in the eligible role for a minimum of three quarters (Q2-Q4), and in the role on 12/31 to be eligible for the annual overachievement bonus. Commercial and Business Banking: Overachievement bonus is paid as part of the monthly commission calculation 60-75 days in arrears. Participants must be in the eligible role for a minimum of two quarters to be eligible for the overachievement bonus.

15. **Plan Acknowledgement: All associates are required to review the following:**

- 2018 Sales Incentive Compensation Plan (“Plan”) – this document
- 2018 Sales Goal Document

16. **Sales Incentive Review Process & Payment Timing:** All incentives under the Program will be paid in arrears approximately 60-75 days after the close of the relevant period. For example; January 2018 incentive will be paid at the end of March 2018.

- Commission statements are available approximately the 3rd week of the month.
- Associates are responsible for reviewing their commission statements for accuracy.
- Associates have 120 days or “longer if required by law” following the publishing of commission statements to identify and submit discrepancies.
- If discrepancies are found, please create an Incentive Inquiry case in [SalesForce.com](#) for resolution.
- Adjustments: Once resolved and/or approved commission adjustments will be slotted for payment with the next regular payroll cycle.

17. Signed Sales for Cross Sale of Entitlements:

- When Business Consultant participation is required in the cross sale of additional entitlements or products where revenue cannot be isolated, the revenue will be credited to Signed Sales goals, but recurring commissions will not be paid since revenue cannot be isolated. These items are generally categorized as organic growth and enhance portfolio performance. When this occurs the following steps should be followed:
 - Create a Cross Sale opportunity in Salesforce.com
 - Once the merchant begins processing, submit an BAMS SFDC Team case requesting the opportunity be moved to Closed Won
 - The Salesforce team will request approval by Incentive Execution to move to Closed Won.
 - If the Incentive Execution team cannot validate revenue, the opportunity will be moved to Closed Lost and no signed sales revenue credit will be given.

18. Terminations and Transfers: In the event a Participant terminates, any incentive payments that have not met the condition of earned commissions prior to the effective date of termination are not earned and will not be paid.

- Monthly commission: Participant must be in the role in the month that commission is earned to be eligible for commission. In the event Participant’s employment terminates or transfers mid-month, any commissions earned during that month will be calculated on a pro rata basis for the number of days in the eligible role during the month.
- Quarterly payments: Quarterly payment eligibility will be pro-rated based on the amount of time in the quarter the Participant is in the eligible role.
- Overachievement bonus: Participants not in the eligible role on 12/31/17 are not eligible for any annual overachievement bonus.
- Transfers: Participants may only participate in one Plan at any given time.
 - Participant moving to a manager role will no longer be eligible to receive commission payments under the previously applicable plan, and commission payments will cease.
 - Participants transferring from one sales role to another may be eligible for a ramp down of commission.

19. TransArmor ILF (Initial Licensing Fee): TransArmor ILF opportunities should be added as either New Business or Cross Sale opportunities since this is actually a fee that consists of the first year of processing and

is amortized monthly by Finance. Recurring commissions will be paid according to the compensation plan for the first 13 months of processing.

20. **Untrackable Products:** Untrackable Products commissions will be paid via a one-time payment (a SPIF). Payment will be based on a verified signed revenue amount and the trigger for payment calculation will be Written Mandate Verified sales stage in SFDC. Un-trackable products are not credited to revenue goals. The official list of un-trackable products is listed in the SFDC pricebook. Payout for these products is as follows:

Opportunity Net Revenue Range		Flat Payment Amount
From	To	
\$500	\$2,500	\$100
\$2,501	\$5,000	\$300
\$5,001	\$7,500	\$450
\$7,501	\$10,000	\$650
\$10,001	\$12,500	\$750
\$12,501	\$15,000	\$900
\$15,001	\$17,500	\$1,050
\$17,501	\$20,000	\$1,200
\$20,001	\$22,500	\$1,350
\$22,501	\$25,000	\$1,500
\$25,001	\$27,500	\$1,650
\$27,501	\$30,000	\$1,800
\$30,001	\$32,500	\$1,950
\$32,501	\$35,000	\$2,100
\$35,001	\$37,500	\$2,250
\$37,501	\$40,000	\$2,400
\$40,001	\$42,500	\$2,550
\$42,501	\$45,000	\$2,700
\$45,001	\$47,500	\$2,850
\$47,501	\$50,000	\$3,000



SECTION D: Definitions –

Client Managed

Not all definitions applicable for all plans

1. **Activation Draw:** Initial draw paid on estimated annualized commission when moved to Closed Won in SFDC; is subject to recovery.
2. **Activations:** Generally defined as a merchant location processing \$20 or more, but may vary based on the product. The activation date used for incentive calculation is the “Live Date” reflected in SalesForce.com (SFDC). Additional activation detail:

Product	Updating Party	Source System	Source info available (approx day)	Activation Indicator	Update Frequency
Acquiring (TSYS)	MID object activation	MODs	Monthly (10 th)*	Transaction of \$20 or more	Monthly
Acquiring (South)	MID object activation	MODs	Monthly (10 th)*	Transaction of \$20 or more	Monthly
Acquiring (North)	CAP/MID object activation	1star/MODs	Daily	Transaction of \$20 or more	Daily/Monthly
GeP	CAP/MID object activation	1star/MODs	Daily	Transaction of \$20 or more	Daily/Monthly
Note: Acquiring (TSYS/South/North) not in 1star or supported by CAP cannot be validated in MODs or moved to Closed Won in SFDC until the month following processing – approx date data available (10-15 th) of each month					
Acquiring (Proprietary)	MID object activation	MAS file	Monthly (15 th)*	Transaction of \$25 or more	Monthly
Telecheck	Manual update	FD Telecheck file /MODs	Monthly (10 - 15 th)*	1st month of revenue reported	Monthly
DCC	Manual update	DSS/Fexco	Monthly (10 th)*	1st month of revenue reported	Monthly
GMA	Manual update	DSS	Monthly (10 th)*	1st month of revenue reported	Monthly
TransArmor/Smart Routing	Manual update	DSS	Monthly (10 th)*	1st month of revenue reported	Monthly
Money Network	Manual update	MN Implementation /Revenue File	Monthly (25-30th)*	1st month of revenue reported	Monthly
Note: DCC, GMA, TransArmor/Smart Routing, and Money Network will be marked live in SFDC once the monthly achievement rate exceeds 1%. Exceptions can be made by request.					
Prepaid – CL Premium Processing	Manual update	MODs	Monthly (10 th)*	1st month of revenue reported	Monthly
Fee Sequence Code based**	Manual update	DSS	Monthly (10 th)*	1st month of revenue reported	Monthly

3. **Assigned Portfolio:** A portfolio of existing clients currently assigned to a BC. The BC is responsible for the growth of his or her Assigned Portfolio. Generally, the Assigned Portfolio is the sum of the merchant numbers. Global BCs may have all the merchant numbers associated with an entire merchant relationship, while a Regional BC may have the portion associated with their home country. (Note: Regional BCs based in the EU may have a portfolio that includes multiple countries.)

4. **Churning:** Entering into a new contract with an existing client that would result in the existing client or any new location of an existing client being treated by Bank of America Merchant Services for compensation, underwriting and other purposes as “new business.”



5. **Contract Renewal:** Defined as a formal, documented and executed extension of an existing client's contract for a period of 24 months or more; whether done via an amendment or an altogether new, replacement agreement. Performance information captured when SFDC contract status = "Complete Signed".

6. **Core:** Incentive designation in the SFDC pricebook that determines the eligible commission rate for the sale of a specific product.

7. **Cross Sale:** A cross sale is a sale to any business entity which has a controlling interest in or is under the control of a merchant with which BAMS currently has business. This distinguishes it from "New Business" and "Organic / Base Growth" for the purposes of sales incentives.

- When an existing client adds a new division, brand, or substantial volume to an existing service, sometimes the difference between a cross sale and organic growth may be unclear. Please submit a SFDC incentive inquiry case for assistance in this scenario.

- **Characteristics:**

- Entity has existing business with BAMS
- New division of an existing client who has a choice of who to process with, and chooses BAMS
- Existing client who boards new Tax IDs, with a new contract
- May require a Business Consultant to perform significant sales activity
- Designation in SFDC of an existing merchant buying new product. Opportunity is created with "Cross Sale" type.

8. **Earned Incentive Compensation:**

- Commission is earned when the Company is in receipt of payment for the underlying product or services sold from the merchant client.
- The Company reserves the right to validate payment for a product or service prior to issuing commission payment.
- Refer to Section A, Page 1, for additional information

9. **Gross Misconduct:** Refers to intentional behavior that violates the company's policies or procedures, or applicable laws or regulations. Generally these are situations that lead to termination without progressive discipline.

Examples include but not limited to:

- Failure to comply with the company policies and procedures such as Code of Ethics, Associate Handbook, expense management and sales practices expectations
- Incentive manipulation
- Fraudulent activities
- Actions that violate laws or regulations
- Harassment



10. **House Account:** Active merchant account with BAMS that is not currently assigned to any Sales Associate

11. **Incentive Eligible Products:** Products that have been approved by the Product Risk Governance Committee, have approved legal documentation with third parties service providers, and are listed in the SFDC Price Book as a Sales Incentive Eligible Product to be commission eligible.

12. **In-Year Revenue:** Revenue earned during the calendar year when the opportunity Sales Stage in SFDC equals Written Mandate Verified during that calendar year, regardless of Activation timing. In Year revenue will be captured in the month earned for credit to goal. In Year Revenue may be either recurring revenue or non-recurring revenue. Goal will generally be designated at the Recurring or Non-Recurring level.

13. **International Sales Activity:**

For the purposes of this definition of “International Sales Activity” and the use of that term in this Program, “BAMS” refers to any one or any combination of the following: (a) Company, (b) Bank of America Merchant Services Canada Corp., or (c) BOFA Merrill Lynch Merchant Services (Europe) Limited.

- **Global Client:** A client who has new or existing business with BAMS in multiple countries.
 - **New Business Global Client:** A Global Client who meets the general definition of New Business, and signs merchant agreement(s) with BAMS for processing in more than one country at one time.
 - **Cross Sell Global Client:** A Global Client, who meets the general definition of Cross Sell, has existing business with BAMS in one country, and signs business with BAMS for merchant services in an additional country.
- **Global BC:** Global BC for the purposes of the Sales Incentive Program refers to the BC with the primary relationship management and portfolio management duties. The Global BC has overall relationship management responsibility for a Global Client with BAMS, and all accounts related to the client are considered to be part of that BC’s Assigned Portfolio.
- **Regional BC:** Regional BC for the purposes of the Sales Incentive Program refers to the BC with relationship management and portfolio management duties for a portion of a Global Client’s merchant’s activities. The Regional BC has responsibility for the relationship management of the portion of the merchant’s activities in the region in which the BC is based, and only those accounts are considered to be part of the BC’s Assigned Portfolio.

14. **New Business:** A contract with a merchant where the merchant has not had any activity with BAMS within the last 12 months.

- **Characteristics:**



- Brand new customer with BAMS or former client who has not processed with BAMS in past twelve (12) months
- Requires BC to perform significant sales activity
- Current designation in SFDC as “Prospect” or no account record found. Also applies for a client who has not processed with BAMS in the past 12 months and re-signs. Opportunity is created with “New Business” type.
- Increasing coverage of an existing product to new locations or divisions and additional locations, or additional features/entitlements to an existing product (such as adding pin debit to credit acceptance) are generally categorized as organic growth that would enhance Portfolio Performance and are not treated as New Business.

15. **Non-Recurring Revenue:** Non-Recurring revenue is generally revenue from any product or service that is invoiced on a one-time non-recurring basis, net any cost of goods sold. For the purpose of commission and credit eligibility, revenue type (recurring vs non-recurring revenue) is listed in the SFDC price book.

16. **Opportunity:** A deal that is eligible for commission in SFDC.

17. **Organic/Base Growth:** Additional volume generated by an existing client on an existing product or service. Examples include an increase in same store sales, new locations or divisions, additional features/entitlements on an existing product. This growth enhances YOY Portfolio Growth, but is not sales incentive eligible.

- **Characteristics:**

- Entity has existing business with BAMS
- New division of an existing client who does NOT have the choice of who to process with and is directed by owner to process with BAMS.
- Existing client who boards new Tax IDs.
- Does not require BC to perform significant sales activity
- Additional locations
- Existing client, increase in revenue due to an increase in volume on an existing product or service

18. **Other Product Revenue (OPR):** Incentive designation in the SFDC pricebook that determines the eligible commission rate for the sale of a specific product.

19. **Recoupment or Commission Recoupment:** Commission payments that are recovered in whole, or in part by the Company from a Participant. Recoupment encompasses what is sometimes referred to as “clawback” or “recovery of funds”.

20. **Recurring Revenue:** Recurring revenue is generally defined as revenue from any product or service that is invoiced on a routine basis (such as monthly), less network expenses such as interchange and assessments. It may also refer to the portion of revenue received by BAMS in Revenue Share agreements. For

the purpose of commission and credit eligibility, revenue type (recurring vs non-recurring revenue) is listed in the SFDC price book.

21. **Revenue Credit:** The amount of revenue, recurring or non-recurring, that is applied toward the calculation of Participant's goal.

22. **Revenue Under Contract:** Rolling 12(R12) revenue for net Merchant Acquiring, Global Merchant Acquiring (GMA) and Closed Loop Pre-Paid (CLPP) as of the end of each stand-alone calendar quarter period for contracts with a contract term equal to or greater than 24 months with an expiration date after the performance period.

Performance will be based upon contract object in SFDC.

23. **Rolling 12 (R12) Revenue:** The sum of actual revenue from the most recent 12 calendar months. For example, R12 for March 2018 will equal actual revenue from April 2017 – March 2018.

24. **SalesForce.com Pricebook:** SFDC Pricebook is a comprehensive listing of all products or services currently supported by BAMS that may or may not be incentive eligible. Additionally, the SFDC Pricebook defines product/service incentive and goal credit eligibility for Participants; is updated periodically during the year as needed; and serves as the source of record for products and services that may be offered to clients by BAMS Sales Associates.

25. **Senior Management:** the Compensation Practices Committee

26. **Signing Bonus:** Consideration given to a merchant for signing a new contract or renewal of an existing contract. Consideration can be given at the time of the contract or over the term on the contract.

27. **Signed Sales:** Opportunities marked as "Written Mandate Verified" in SFDC are considered Signed Sales. Signed Sales credit will be recognized in the month the opportunity is marked with "Written Mandate Verified" sales stage.

28. **Signing Draw:** Commission paid on estimated annual revenue when opportunity sales stage is moved to Written Mandate Verified in SFDC; is subject to recoupment.

29. **Un-trackable Products:** Revenue generating products or services whose revenue that cannot be systemically isolated for incentive payment purposes.





CHERIE K. BERRY
Commissioner of Labor

Harriet S. Hopkins
Administrator
Retaliatory Employment Discrimination Bureau

January 8, 2020

BY CERTIFIED MAIL
7019112000225100605

Barbara Griffith
13043 West Linebaugh Ave.
Tampa, FL 33626

**Re: Barbara Griffith v. Banc Of America Merchant Services, Llc
File No: 51779**

Dear Barbara Griffith:

The Bureau has received your request that the Bureau issue you a right-to-sue letter regarding the above-referenced complaint. Your request meets the requirements set forth in the Retaliatory Employment Discrimination Act (REDA), N.C. Gen. Stat. §95-242(c).

THIS IS YOUR 90-DAY RIGHT-TO-SUE LETTER. Pursuant to N.C. Gen. Stat. §95-243, if you intend to pursue a lawsuit against the Respondent, you must file a civil action in superior court within ninety (90) days of the date of this letter. If you fail to file a civil action within this time, your right to sue the Respondent under the provisions of REDA is lost.

If you want to seek legal advice regarding the requirements for filing a civil action, you may consult with an attorney or the NC Lawyer Referral Service at the NC Bar Association at 1-800-662-7660 may be able to refer you to an attorney.

With the issuance of this 90-Day Right-to-Sue letter, your complaint file is now closed and the Bureau will take no further action on your case. If you have questions, you may contact our Information Officer, Jay Cronley, as set out below. A copy of this letter has been sent to Respondent.

Sincerely,

Jay Cronley
Information Officer

cc: Respondent
Complainant RTS Letter--Requested

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33626-448526

Barbara Griffith c/o Dennis Creed
13043 West Linebaugh Ave.
Tampa, FL 33626